contributory negligence as a matter of law. *Atchinson, T. & S. F. R. Co. v. Tindall,* 57 Kan. 719; *Quirouet v. Alabama Great Southern R. Co.,* 111 Ga. 315. The above is well illustrated in *Lothrop v. Fitchburg R. Co.,* 150 Mass. 423, where the court held as a matter of law that a brakeman, who, in attempting to couple from the north side of the track two flat cars of timbers, which on that side dangerously projected toward each other, was killed by having his head caught between the timbers, did not exercise due care, as the danger would have been avoided if he had stooped or coupled from the south side of track. In other jurisdictions, different facts have caused the courts to hold that the adoption of a dangerous way of accomplishing a task when a safe way is open to him is not necessarily negligence, but is a question of fact for the jury. *Gibson v. Burlington, C. R. & N. Ry. Co.,* 107 Ia. 596; *Norton Bros. v. Sczpurak,* 70 Ill. App. 686; *Flutter v. N. Y., Chicago & St. L. R. Co.,* 27 Ind. App. 511.

MASTER AND SERVANT—INJURY TO SERVANT—FELLOW SERVANTS—CONTRIBUTORY NEGLIGENCE.—DAVIDSON V. FLOUR CITY ORNAMENTAL IRON WORKS, 119 N. W. 483 (MINN.).—The duties of an operator required him to change the emery wheels from time to time to meet the exigencies of the work, and in making these changes it was necessary to remove a guard. This he negligently failed to replace, and the revolving wheel injured respondent. *Held,* that the operator and respondent were not fellow servants, that the defenses of contributory negligence and assumption of risk were not applicable, and that appellant was responsible for failure to maintain the guard. Elliott, J., *dissenting.*

It has been held that all serving a common master and working under the same control, deriving their authority and compensation from the same source, and engaged in the same business, although in different departments, are fellow servants and take the risk of each other's negligence. *N. & W. R. R. Co. v. Donnelly,* 80 Va. 853. And that the master's liability depends on his exercise of reasonable care to ascertain the competency of his servant, whose negligence caused the injury to the other servant. *Nordyke & Marmon Co. v. Van Sant,* 99 Ind. 188; *Norfolk & W. R. Co. v. Nuckols,* 91 Va. 193. But by the weight of authority the true test to determine whether the negligent act causing the injury is chargeable to the master, is, was the negligent employee in the performance of the master's duty, or charged therewith? If so his negligence is that of the master and the latter is liable, otherwise it is theact of a co-servant. *Colley on Torts,* Stud.'s Ed. 553; *Lewis v. Serfert,* 116 Pa. 628. Another test is, did the injury result from the negligence in performing personal duties, which the master cannot delegate. *Koosorowska v. Glasser,* 8 N. Y. Supp. 197; *Enright v. Olliver & Burr,* 69 N. J. L. 357.

MASTER AND SERVANT—PERSONAL INJURIES—"RES IPSA LOQUITUR"—KEENAN V MCADAMS & CARTWRIGHT E. CO., 113 N. Y. Supp. 343.—*Held,* that the rule of *res ipsa loguitur* cannot be applied, where no negligence

on defendants part is shown by direct evidence, and it is apparent that other causes may have led to the accident. Laughlin, J., *dissenting.*

The weight of authority holds that the origin of the accident being fixed upon the defendant, negligence is presumed in the absence of explanation. *Shearman & R. on Negligence,* Sect. 60; *Spaulding v. C. & N. W. R. Co.,* 30 Wis. 110. In the following cases negligence was presumed: explosion of a steamboat boiler; *Posey v. Scoville,* 10 Fed. Rep. 140; running down cattle on the railroad track; *Louisville R. Co. v. Conrey,* 63 Miss. 562; and where a bolt fell from an elevated railway into the street; *Volkmar v. Manhattan Co.,* 134 N. Y. 418. But some courts hold that negligence is not presumed in the absence of explanation. *Huff v. Austin,* 46 Ohio St. 386; *Consulich v. Standard Oil Co.,* 12 N. Y., 118; except where the relation of carrier and passenger exists; *Curtis v. Rochester, etc., Ry. Co.,* 18 N. Y. 534; and where the condition or event permits no inference save negligence on the part of the defendant. *Mullen v. St. John,* 57 N. Y. 567.

RAILROADS—CROSSING ACCIDENTS—CONTRIBUTORY NEGLIGENCE—SCHAUB V. KANSAS CITY SOUTHERN, 113 S. W. 1163 (MO. APP.).—*Held,* that it is the duty of one on approaching a railroad crossing, on a public street, to look and listen and use reasonable care to discover appraching trains.

The absence of a watchman, usually stationed at a crossing, the fact that the gates are open, or the silence of an alarm bell known to ring on the approach of a train, do not free one from the duty to stop, look and listen before entering the danger zone. *St. Louis I. M. & S. Ry. Co. v. Amos,* 54 Ark. 159; *Romeo v. Boston & M. R. R.,* 87 Me. 540; *Tobias v. Mich. Cent. R. Co.,* 110 Mich. 440; *Greenwood v. Philadelphia W. & B. R. Co.,* 124 Pa. 572. However, he has a right to take any of these facts into consideration in determining to what extent he will look. *Merrigan v. Boston & A. R. Co.,* 154 Mass. 189. Contrary to this view, many jurisdictions have held the lack of the prescribed signs of warning an assurance of a safe crossing; and that, one injured while crossing without farther investigation regarding movements of trains is free from contributory negligence. *Chicago, R. I. & P. Ry. Co. v. Clough,* 134 Ill. 586; *Kane v. New York, N. H. & H. R. Co.,* 56 Hun. 648; *Berry v. Pennsylvania R. Co.,* 48 N. J. Law (19 Vroom) 141; *Cleveland, C., C. & I. Ry. Co. v. Schneider,* 45 Ohio St. 678. When one waits to allow a train to pass, and only proceeds after the customary signal showing the way to be clear, he need not stop to assure himself of the conditions. *Conaty v. New York, N. H. & H. R. Co.,* 164 Mass. 572; *Oldenburgh v. York Cent. H. R. Co.,* 124 N. Y. 414.

RAILROADS—CONTRIBUTORY NEGLIGENCE—LAST CLEAR CHANCE.—WILKINSON V. OREGON SHORT LINE R. R. CO., 99 PAC. 466 (UTAH).—Where the plaintiff was driving along the side of a railroad track in a place of safety, and, without looking, attempted to cross the track, and was struck by an engine and injured, *held,* that he was not entitled to recover on the ground that by the exercise of ordinary care defendant's servant